

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.58.326 and 17.58.336 pertaining to )	PROPOSED AMENDMENT
applicable rules governing the operation )	
and management of petroleum storage )	
tanks and review of claims )	(PETROLEUM BOARD)

TO: All Concerned Persons

1. On June 7, 2006, at 10:00 a.m., the Petroleum Tank Release Compensation Board will hold a public hearing in Room 112, 1100 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., May 30, 2006, to advise us of the nature of the accommodation that you need. Please contact Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; phone (800) 556-5291; fax (406) 841-5091; e-mail twadsworth@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.58.326 APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF PETROLEUM STORAGE TANKS (1) The applicable state rules referenced in 75-11-308(1)(a)(b)(ii) and (e) 75-11-309(1)(b), MCA, are:  
(a) through (2)(b) remain the same.

AUTH: 75-11-318, 75-11-319, MCA  
IMP: 75-11-308, MCA

REASON: The 2005 legislature renumbered 75-11-308(1)(a)(ii), MCA, to 75-11-308(1)(b)(ii), MCA, and deleted former 75-11-308(1)(c), MCA, and added a new section 75-11-309(1)(b), MCA.

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) The board must not approve a ~~Claims claim~~ for reimbursement ~~may not be considered~~ unless the owner or operator has submitted a completed application for eligibility and the board has determined that the owner or operator is eligible in accordance with 75-11-308, MCA.

(2) through (6) remain the same.

(7) Claims subject to the provisions of 75-11-309(2) or (3)(b)(ii), MCA, must be reimbursed according to the following:

(a) Except as provided in (10) (7)(e), such claims subject to the provisions of 75-11-308(3), MCA, must be paid pursuant to the following schedule:

Period of Noncompliance	Percent of allowed claim to be reimbursed
1 to 30 days	90%
31 to 60 days	75%
61 to 90 days	50%
91 to 180 days	25%
greater than 180 days	no reimbursement

(a) (b) The period of noncompliance begins on the date of a violation letter that is sent by the department by certified mail to an owner or operator. The period of noncompliance ends on the date the department determines that all violations identified in the violation letter are corrected. The department shall indicate, by letter sent by certified mail to the owner or operator, the date that the violations were corrected. For claims subject to the provisions of 75-11-309(2), MCA, the period of noncompliance must begin on the date upon which the department issues an administrative order to the owner or operator. The period of noncompliance must end on the date upon which the owner or operator has satisfied the administrative order, as determined by the department in writing.

(b) (c) Reimbursement of claims submitted after issuance of a violation letter must be suspended until all violations are corrected as indicated by a certified letter from the department indicating compliance. After the owner or operator comes into compliance as indicated by the department, the board shall determine the appropriate rate of reimbursement at its next regularly scheduled meeting. Claims submitted prior to the issuance of a violation letter are not suspended and must be reimbursed or denied pursuant to (1) through (6). For claims subject to the provisions of 75-11-309(3)(b)(ii), MCA, the period of noncompliance must begin on the date upon which the board determines that the owner or operator has not complied with 75-11-309, MCA, or rules adopted pursuant to 75-11-309, MCA. The period of noncompliance must end on the date upon which the board determines that the owner or operator has returned to compliance.

(d) Reimbursement of claims filed during the period of noncompliance must be suspended by the board. If the owner or operator returns to compliance as provided in (7)(b) or (c), the board may allow reimbursement of the suspended and future claims as provided in (7)(a). Any such reimbursement is subject to the requirements of 75-11-309(3)(a), MCA.

(8) A violation letter is one that is issued by the department to an owner or operator who has failed to remain in compliance. The violation letter must be signed by a division administrator and indicate on it that it is a violation letter being issued pursuant to this rule. The violation letter shall notify the owner or operator of the specific statute(s) or rule(s) alleged to be violated and the action(s) to be taken that correct the violation(s). For purposes of determining the percentage reimbursed under (10) of this rule, the board may review the circumstances of the department's

~~issuance of a violation letter, including those relating to whether a violation occurred, whether a violation was corrected, and when a violation was corrected.~~

~~(9) The provisions of (7), (8), (10) and (12) apply only when a release has been discovered and eligibility has been determined by the board, but the owner or operator fails to remain in compliance as required by 75-11-308(1)(e) and (1)(f), MCA.~~

~~(10) (e)~~ The percentages of reimbursement set forth in (7)(a) may be adjusted by the board according to the procedures in (6) upon a substantial showing by the owner or operator that one or more of the following factors applies and would entitle the owner or operator to an adjustment:

(a) through (c) remain the same, but are renumbered (i) through (iii).

~~(d) (iv)~~ there was an error in the issuance of the ~~violation letter~~ administrative order or an error in the determination of the date a violation an administrative order was corrected or whether a violation has been corrected satisfied; or

~~(e) (v)~~ any other factor that would render use of the reimbursement schedule in (7)(a) demonstrably unjust.

~~(11) (8)~~ An owner or operator dissatisfied with the denial or disallowance of all or any part of the claim may request a formal hearing. This request, with a specification of the grounds for disagreement with the board's decision, must be filed in writing with the board within 15 days of the ~~receipt of the board's determination by the owner or operator~~ date upon which the board provides written notice to the owner or operator of the board's decision. Upon receiving such request, the presiding officer of the board may appoint a hearing examiner to supervise any discovery and prehearing matters and to conduct the hearing, ~~either at a subsequent meeting of the board or outside a board meeting, subject to 2-4-621, MCA, as the appointment may specify in accordance with ARM 17.58.201.~~

~~(12) (9)~~ With the exception of the timeframes set forth in (7)(a) ~~of this rule~~, any other time periods specified in this rule may be extended by agreement between the board and the owner or operator.

AUTH: 75-11-318, MCA

IMP: 75-11-309, MCA

REASON: The current version of ARM 17.58.336 sets forth general rules for reimbursement of claims, and also specifically addresses the suspension of claims for noncompliant owners under authority of former 75-11-308(1)(f) and (3), MCA. The 2003 legislature renumbered 75-11-308(1)(f), MCA, as 75-11-308(1)(d), MCA. The 2005 legislature deleted 75-11-308(1)(d) and 75-11-308(3), MCA, and amended 75-11-309, MCA, by adding new provisions for the suspension of claims in those cases where an eligible owner/operator falls out of compliance. See 75-11-309(2) and (3)(b)(ii), MCA. Sections 75-11-309(2) and (3)(b)(ii), MCA, delineate the circumstances under which an owner or operator is deemed to be out of compliance, and provide that the claims of an owner or operator who falls out of compliance must be suspended. Those sections of 75-11-309, MCA, also provide that, if an owner or operator whose claims have been suspended thereafter returns to compliance, the suspended claims may be reimbursed pursuant to criteria established by the board.

The proposed amendments to this rule are necessary to clarify the rule and to address the legislative changes mentioned above.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 841-5091; or e-mailed to Terry Wadsworth at twadsworth@mt.gov no later than June 15, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Edward Hayes, attorney, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive rulemaking notices. Such written request may be mailed or delivered to Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 841-5091; or e-mailed to Terry Wadsworth at twadsworth@mt.gov or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

Reviewed by:

PETROLEUM TANK RELEASE  
COMPENSATION BOARD

/s/ James M. Madden  
JAMES M. MADDEN

BY: /s/ Greg Cross  
GREG CROSS, Chairman

Certified to the Secretary of State May 8, 2006.